

The House Committee on Judiciary offers the following substitute to HB 311:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 21 of Title 50, Title 36, Part 1 of Article 3 of Chapter 3 of Title 23, and Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to waiver of sovereign immunity as to actions ex contractu and state tort claims, local government, conventional quia timet, and judgments and rulings deemed directly appealable, procedure for review of judgments, orders, or decisions not subject to direct appeal, scope of review, hearings in criminal cases involving a capital offense for which death penalty is sought, and appeals involving nonmonetary judgments in child custody cases, respectively, so as to provide for a limited waiver of sovereign immunity for declaratory or injunctive relief under certain circumstances; to provide for definitions; to provide for exceptions; to provide for immunity of state and local officers and employees in their individual capacity; to provide for a waiver of sovereign immunity as to actions ex contractu for breach of written contract to which a municipal corporation is a party; to provide for appeals; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I
SECTION 1-1.

Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to waiver of sovereign immunity as to actions ex contractu and state tort claims, is amended by adding a new article to read as follows:

"ARTICLE 3

50-21-50.

As used in this article, the term:

(1) 'Governmental entity' means a department, agency, division, bureau, board, commission, authority, office, or committee.

(2)(A) 'Officer or employee' means, whether with or without compensation, any natural person who is:

(i) Elected to a state office;

(ii) Appointed to a state governmental entity; or

(iii) Employed by the state or a state governmental entity.

(B) Such term shall not include an independent contractor doing business with this state or a state governmental entity.

(3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.

(4) 'Person' means an individual, corporation, partnership, firm, business trust, joint-stock company, association, syndicate, group, pool, joint venture, an unincorporated association or group, a county, municipal corporation, consolidated government, and school system, but such term shall not include a hospital authority, housing or other local authority, or any other unit of local government.

(5) 'State' means the State of Georgia, but such term shall not include a county, municipal corporation, consolidated government, school system, hospital authority, housing or other local authority, or any other unit of local government.

(6) 'State mental health facility' shall have the same meaning as set forth in Code Section 37-1-1.

(7) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof that is codified in the Official Code of Georgia Annotated or has become law.

(8) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

50-21-51.

(a) Sovereign immunity is waived as to any claim that is brought by an aggrieved person in the courts of this state against this state, a state governmental entity, or an officer or employee in his or her official capacity and that seeks declaratory or injunctive relief to remedy an injury in fact caused to such aggrieved person, including, but not limited to, an imminent threat of injury to such aggrieved person, by this state, a state governmental entity, or an officer or employee in his or her official capacity in violation of state law, the Constitution of Georgia, or the Constitution of the United States. This waiver extends to any claim seeking declaratory or injunctive relief from the enforcement of a state statute on the basis that the statute, on its face or as applied, violates the Constitution of Georgia or the Constitution of the United States.

(b) This Code section shall not waive sovereign immunity of this state, a state governmental entity, or an officer or employee in his or her official capacity as to any claim:

(1) For which a state statute explicitly prohibits such waiver;

(2) For monetary relief, attorney's fees, or expenses of litigation except as provided in Code Section 9-15-14;

(3) Alleging a violation of federal law, other than the United States Constitution;

(4) Brought in a court of the United States; or

(5) Brought by, or on behalf of, an individual in a penal institution or a state mental health facility.

50-21-52.

This article shall be narrowly construed and shall not:

(1) Toll or extend any applicable period of limitations;

(2) Alter or amend any other waiver of sovereign immunity provided by state statute;

(3) Be construed to waive other immunities provided by state statute or recognized by the courts of this state, including, but not limited to, grand juror immunity, judicial immunity, legislative immunity, official immunity, or qualified immunity; or

(4) Except as expressly waived by this article, alter or amend any other legal requirement for filing a suit or obtaining relief, including, but not limited to, jurisdiction, standing, exhaustion of administrative or other remedies, notice requirements, and defenses to or limitations on the exercise of equitable jurisdiction.

50-21-53.

(a) An officer or employee shall not be subject to a suit under this article in his or her individual capacity for performance or nonperformance of his or her official duties.

(b) The immunity conferred by subsection (a) of this Code section shall:

(1) Extend to any suit, including, but not limited to, suits seeking monetary, declaratory, or injunctive relief, unless such suit against such officer or employee in his or her individual capacity is expressly authorized by state statute; and

(2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct was ultra vires, unconstitutional, or illegal.

50-21-54.

A suit for which sovereign immunity is waived under this article shall name only the state, a state governmental entity, an officer or employee in his or her official capacity, or a combination thereof. If an officer or employee is named in such suit in his or her

individual capacity, upon proper motion, the court shall dismiss him or her as the party defendant and, if appropriate, order such officer or employee in his or her official capacity be joined as a party defendant.

50-21-55.

(a) No suit for which sovereign immunity is waived under this article shall be commenced, and the court shall not have jurisdiction thereof, until 30 days after the date that a written notice is sent to the state governmental entity or officer or employee to be named as a party defendant and the Attorney General by certified mail, return receipt requested, by statutory overnight delivery, or delivered personally to such entity and persons and obtaining a receipt for such delivery. Such notice shall identify the specific law or action being challenged and the nature of the relief being sought.

(b) No suit for which sovereign immunity is waived under this article shall proceed until the plaintiff provides the court with proof of service upon the Attorney General or his or her designee and the state governmental entity that is charged with enforcing the state statute being challenged.

(c) A suit for which notice has been provided in accordance with this Code section shall be filed no later than 90 days after such notice has been provided."

PART II

SECTION 2-1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended in Code Section 36-33-1, relating to a municipal corporation's immunity from liability for damages and the waiver of immunity by the purchase of liability insurance, by adding a new subsection to read as follows:

"(c) Sovereign immunity of a municipal corporation shall be waived as provided in Article 2 of Chapter 80 of this title."

SECTION 2-2.

Said title is further amended in Chapter 80, relating to general provisions regarding provisions applicable to counties, municipal corporations, and other governmental entities, by designating the existing Code sections as Article 1 and adding a new article to read as follows:

"ARTICLE 2

36-80-50.

As used in this article, the term:

(1) 'Governmental entity' means a department, agency, division, bureau, board, commission, authority, office, or committee formed or established by a political subdivision.

(2)(A) 'Officer or employee' means, whether with or without compensation, any natural person who is:

(i) Elected to a political subdivision office;

(ii) Appointed to a political subdivision governmental entity; or

(iii) Employed by a political subdivision or a political subdivision governmental entity.

(B) Such term shall not include an independent contractor doing business with this state, a political subdivision, a state governmental entity, or a political subdivision governmental entity.

(3) 'Penal institution' shall have the same meaning as set forth in Code Section 42-1-5.

(4) 'Person' shall have the same meaning as set forth in Code Section 50-21-50.

(5) 'Political subdivision' means a county, municipal corporation, or consolidated government.

(6) 'Rule or regulation' shall have the same meaning as set forth in paragraph (6) of Code Section 50-13-2.

(7) 'State' shall have the same meaning as set forth in Code Section 50-21-50.

(8) 'State mental health facility' shall have the same meaning as set forth in Code Section 37-1-1.

(9) 'State statute' means a title, chapter, article, part, subpart, Code section, or part thereof that is codified in the Official Code of Georgia Annotated or has become law.

(10) 'Suit' means a civil lawsuit or legal proceeding that contains one or more claims.

36-80-51.

(a) Sovereign immunity is waived as to any claim that is brought by an aggrieved person in the superior courts of this state against a political subdivision, a political subdivision governmental entity, or an officer or employee in his or her official capacity and that seeks declaratory or injunctive relief to:

(1) Challenge a local ordinance adopted by a political subdivision or a rule or policy adopted by a political subdivision or a political subdivision governmental entity under the Constitution of Georgia, the Constitution of the United States, a state statute, or rule or regulation;

(2) Remedy an injury in fact caused to such aggrieved person, including, but not limited to, an imminent threat of injury to such aggrieved person, by a political subdivision, a political subdivision governmental entity, or an officer or employee in his or her official capacity acting without lawful authority, beyond the scope of official power, or in violation of the Constitution of Georgia, the Constitution of the United States, a state statute, a rule or regulation, or a local ordinance of a political subdivision except a zoning ordinance as defined in Code Section 36-66-3; or

(3) Remedy an injury when the injury is related to the award of a proposed agreement with a political subdivision or an officer or employee in his or her official capacity. A person who bid on such proposed agreement claiming an injury as described in paragraph (2) of this subsection as to such award shall file suit for declaratory or injunctive relief no later than ten days from the date that the award is made public. Any agreement resulting from an award of a bid or proposal shall not be effective until the expiration of ten days after the award is made public, except for emergencies as defined in Code Section 36-91-2.

(b) This Code section shall not waive sovereign immunity of a political subdivision, a political subdivision governmental entity, or an officer or employee in his or her official capacity as to any claim:

(1) For which a state statute explicitly prohibits such waiver;

(2) For monetary relief, attorney's fees, or expenses of litigation except as provided in Code Section 9-15-14;

(3) Alleging a violation of federal law, other than the United States Constitution;

(4) Brought in a court of the United States; or

(5) Brought by, or on behalf of, an individual in a penal institution or a state mental health facility.

36-80-52.

This article shall be narrowly construed and shall not:

(1) Toll or extend any applicable period of limitations;

(2) Alter or amend any other waiver of sovereign immunity provided by state statute;

(3) Be construed to waive other immunities provided by state statute or recognized by the courts of this state, including, but not limited to, grand juror immunity, judicial immunity, legislative immunity, official immunity, or qualified immunity; or

(4) Except as expressly waived by this article, alter or amend any other legal requirement for filing a suit or obtaining relief, including, but not limited to, jurisdiction, standing, exhaustion of administrative or other remedies, notice requirements, and defenses to or limitations on the exercise of equitable jurisdiction.

36-80-53.

(a) An officer or employee shall not be subject to a suit under this article in his or her individual capacity for performance or nonperformance of his or her official duties.

(b) The immunity conferred by subsection (a) of this Code section shall:

(1) Extend to any suit, including, but not limited to, suits seeking monetary, declaratory, or injunctive relief, unless such suit against such officer or employee in his or her individual capacity is expressly authorized by state statute; and

(2) Apply notwithstanding an allegation in a suit that an officer's or employee's conduct was ultra vires, unconstitutional, or illegal.

36-80-54.

A suit for which sovereign immunity is waived under this article shall name only the political subdivision, a political subdivision governmental entity, an officer or employee in his or her official capacity, or a combination thereof. If an officer or employee is named in such suit in his or her individual capacity, upon proper motion, the court shall dismiss him or her as the party defendant and, if appropriate, order such officer or employee in his or her official capacity be joined as a party defendant.

36-80-55.

(a) No suit for which sovereign immunity is waived under this article against a political subdivision, a political subdivision governmental entity, or an officer or employee in his or her official capacity as provided in Code Section 36-80-51 shall be commenced, and the courts of this state shall not have jurisdiction thereof, until 30 days after the date that a written notice is mailed by certified mail, return receipt requested, or by statutory overnight delivery to:

(1) The sole county commissioner or chairperson of the county commission, as the case may be, in the case of a county; or

(2) The mayor or chairperson of the city council or city commission, as the case may be, in the case of a municipal corporation or consolidated government.

(b) Such notice shall identify the action being challenged pursuant to this article and the nature of the relief being sought.

(c) No suit containing a claim under Code Section 36-80-51 shall proceed in the courts of this state until the plaintiff provides the court with proof of service upon the appropriate authority as provided in this Code section.

(d) The notice required by this Code section shall not be required for suits brought pursuant to paragraph (3) of subsection (a) of Code Section 36-80-51.

(e) A suit for which notice has been provided in accordance with this Code section shall be filed no later than 90 days after such notice has been provided.

36-80-56.

Sovereign immunity of a political subdivision as defined in Code Section 36-80-50, a political subdivision governmental entity as defined in Code Section 36-80-50, or an officer or employee as defined in Code Section 36-80-50 in his or her official capacity is hereby waived as to any claim in ex contractu for the breach of a written agreement with a political subdivision, a political subdivision governmental entity, or an officer or employee in his or her official capacity and only as between the parties to such written agreement."

PART III

SECTION 3-1.

Part 1 of Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated, relating to conventional quia timet, is amended by revising Code Section 23-3-41, relating to when relief is granted and costs, as follows:

"23-3-41.

(a) In all proceedings quia timet or proceedings to remove clouds upon titles to real estate, if a proper case is made, the relief sought shall be granted to any complainant irrespective of whether the invalidity of the instrument sought to be canceled appears upon the face of the instrument or whether the invalidity appears or arises solely from facts outside of the instrument.

(b) ~~In~~ Except as provided in Code Section 23-3-45, in such cases the costs shall be taxed against the litigants in the discretion of the court."

SECTION 3-2.

Said part is further amended by adding two new Code sections to read as follows:

"23-3-45.

The defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim, or third-party claim brought in the courts of this state by an aggrieved person seeking a declaratory judgment or injunctive relief under this part; provided, however, that sovereign

immunity is not waived as to any claim for monetary relief, attorney's fees, or expenses of litigation that are included in or related to such claim, counterclaim, cross-claim, or third-party claim, except as provided in Code Section 9-15-14.

23-3-46.

Notwithstanding any law to the contrary, a proceeding under this part involving title to property or an instrument held by the state or any department, agency, commission, board, authority, or entity thereof shall also be served on such department, agency, commission, board, authority, or entity and the Attorney General. When the Attorney General does not file a responsive pleading to an action filed pursuant to this part, the court shall accept this state's acquiescence to the petitioner's claim for relief."

PART IV

SECTION 4-1.

Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and rulings deemed directly appealable, procedure for review of judgments, orders, or decisions not subject to direct appeal, scope of review, hearings in criminal cases involving a capital offense for which death penalty is sought, and appeals involving nonmonetary judgments in child custody cases, is amended in subsection (a) by deleting "and" at the end of paragraph (12), by replacing the period with "; and" at the end of paragraph (13), and by adding a new paragraph to read as follows:

"(14) All judgments, orders, or rulings denying or refusing to grant immunity to one or more parties based upon sovereign, official, qualified, or any other immunity established by the United States Constitution or the Constitution, laws, or common law of this state when such party or parties are the state, state governmental entities, political subdivisions, political subdivision governmental entities, or officers or employees as such are defined in Code Section 36-80-50 or 50-21-50, as applicable; provided, however, that the right of direct appeal under this paragraph shall not be exercised by any one party more than once in a case. This paragraph shall not preclude taking an appeal pursuant to any other paragraph in this subsection."

PART V

SECTION 5-1.

All laws and parts of laws in conflict with this Act are repealed.